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District Court Grants Summary Judgment after Insurance Company Refuses to Pay Settlement Funds

In *Stone v. State Auto Mut. Ins. Co., 2017 U.S. Dist. LEXIS 21737,* Billy Ray Stone (Stone) filed an action against State Automobile Mutual Insurance Company (State Auto) for breach of contract and bad faith after State Auto did not disburse the settlement funds. Stone contended that State Auto refused or failed to pay the amount agreed upon in settlement following a prior automobile accident and acted in bad faith in their refusal to pay. In response, State Auto filed a motion for summary judgment.

After Stone sustained injuries in a prior automobile accident, Medicare paid $80,296.19 for treatment of Stone's accident-related injuries. Stone then filed a lawsuit against the other motorist, Bradley James Frye, and State Auto, which resulted in Stone agreeing to a $30,000.00 settlement with State Auto. Stone settled separately with Frye. In the Full and Final Release with State Auto, Stone agreed to investigate and pay any current Medicare conditional payment claims and provide State auto with a copy of correspondence from Medicare confirming that the lien was satisfied and/or Medicare's file was closed. When Stone's counsel contacted State Auto and inquired about the settlement check, State Auto noted that, although they were aware that Stone had satisfied the liens that existed at the time of his settlement with Frye, they would require updated documentation confirming that no additional Medicare lien existed. State Auto then requested that Stone sign authorization that would allow Statue Auto to communicate with Medicare directly to confirm that Medicare had not asserted any additional liens. Stone did not sign the consent form and did not provide State Auto with documentation from Medicare confirming that their file was closed. As a result, State Auto refused to issue the settlement funds to Stone, which resulted in the present action.

Citing *Humana Med. Plan, Inc. v. W. Heritage Ins. Co., 832 F.3d 1229 (11th Cir. 2016),* the Court noted that there was a possibility that State Auto would have to pay twice, given the potential that State Auto would have to reimburse Medicare, despite having reimbursed the beneficiary, if the liens were not properly addressed. The Court further noted that State Auto acted reasonably and prudently in withholding the settlement funds until they were presented with documentation from Medicare confirming that the liens had been handled. Because Stone did not produce the documentation requested by State Auto, the Court granted State Auto's motion for summary judgment. The Court found that Stone had no credible basis to assert that State Auto acted in bad faith and that State Auto's decision to withhold funds was reasonable in light of the uncertainty regarding any potential Medicare liens.

Workers' Compensation Appeal Board Enforces Terms of Original Settlement Giving Defendant the Sole Option to Close Medicals by Funding of a CMS-approved MSA

In *Scheaffer v. Workers' Comp. Appeal Bd. Std. Steel, 2017 Pa. Commw. Unpub. LEXIS 103 (February 14, 2017),* Mark Scheaffer (Scheaffer) appealed the Order of the Workers' Compensation Judge (WCJ) approving closure of the medical portion of the case by funding of a Medicare Set-aside. Scheaffer argued that the parties had not reached an agreement to close medical benefits with an MSA and that an order should not have been issued before he had an opportunity to object and provide testimony.

The Workers' Compensation Appeal Board looked to the record and found the terms of the original Compromise and Release to be clear. As a term of the original settlement, the parties expressly agreed that, once CMS approved an MSA, the Employer, at its sole discretion, could fund the approved MSA or choose to leave medical benefits open. The Employer had decided to fund the CMS-approved MSA and submitted documentation of the same to the WCJ, who issued the Order confirming that the medical portion of the case was closed by the funding of the Medicare Set-aside.

The Workers' Compensation Appeal Board upheld the Order because, as an express term of the original settlement, Scheaffer had agreed that the Employer had the sole option to close medical benefits by funding a CMS-approved MSA.

Recent Client Feedback

"Thanks so much for your quick reply and help. As I've said before, I have consistently been impressed by your firm and its members. You are very much appreciated."

"You made this process so easy! And that made my job so much easier. I cannot tell you how happy I was with you and everyone I came in contact with at Carr Allison."

"Thanks Jessica. You just saved us another $18,000."

"I can't thank you or your firm enough for your extensive knowledge on the subject of Medicare."

"Thank you so much for getting this resolved for us. This is a huge weight lifted for us and we will be thrilled to finally close our file on it."

U.S. District Court Looks To Eleventh Circuit Decision In Deciding Medicare Advantage Organization's Claim Under The Private Cause Of Action Provision Of The MSP

In September 2016, we informed you of an Eleventh Circuit decision in which the Circuit Court found that a contractual obligation alone was enough to establish demonstrated responsibility as required in order to bring a claim under the private cause of action provision of the Medicare Secondary Payer Act (MSP) (see *MSP Recovery, LLC v. Allstate Ins. Co., 2016 U.S. App. Lexis 15984).* The present case, *Claims v. Infinity Auto Ins. Co., No. 15-2504-civ-KING/TORRES, 2017 U.S. Dist. Ct. LEXIS 34711*, was one of seven consolidated cases involved in this Eleventh Circuit ruling. The case was brought back before the U.S. District Court for the Southern District of Florida for consideration of Defendant's (Infinity Auto Insurance Company) motion to dismiss Plaintiff's (MSP Recovery, LLC) second amended complaint for lack of standing and failure to state a claim under the MSP.

The District Court briefly considered the lack of standing argument which turned on whether the Medicare Advantage Organization (MAO) had validly assigned its claim to Plaintiff. Looking to the Eleventh Circuit decision, the Court held that because Plaintiff's second amended complaint alleged that the MAO assigned its claims to Plaintiff, Plaintiff had standing.

In arguing that the Plaintiff failed to state a claim under the MSP, the Defendant argued that Plaintiff failed to allege Defendant was responsible for paying enrollee's medical bills, had knowledge of those bills, that Plaintiff demanded payment, or that Defendant knew the enrollee was a Medicare beneficiary. Again, the Court looked to the Eleventh Circuit's decision, finding that Plaintiff's allegations that Defendant was contractually obligated to make primary payment and failed to do so was sufficient for showing responsibility to pay. Further, the Court noted that the Plaintiff had issued a demand letter and provided a copy of that with its complaint, eliminating the arguments that the Defendant did not have knowledge, that payment was not demanded, and that Defendant was not aware enrollee was a Medicare beneficiary. The Court denied Defendant's motion to dismiss the claim.

We will continue to monitor this case as it progresses and provide you with updates. If you have questions about Medicare Advantage Organizations and the lien research process, please let us know and we will be happy to help.

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U.S. District Court Again Relies on Eleventh Circuit Decisions And Allows Medicare Advantage Organization's Claim to Proceed Under the Private Cause Of Action Provision of MSP

In the recent case, Mspa v. Century Sur. Co., No. 16-20752, 2017 U.S. Dist. LEXIS 37040 (U.S. Dist. S.D. Fla., March 15, 2017), the United States District Court for the Southern District of Florida once again considered the rights of Medicare Advantage Organizations (MAOs) to seek reimbursement of medical expenses under the Medicare Secondary Payer Act (MSP). In this case, the enrollee of Florida Healthcare Plus, a Medicare Advantage Organization (MAO), was injured on property insured by Defendant, Century Surety Company. The Defendant, aware of its primary payer responsibility under the MSP, failed to reimburse the MAO, which had made payments on behalf of the enrollee for medically necessary procedures and services related to the accident.

Because the Defendant failed to pay for the medical services or reimburse the MAO, the Plaintiff, as assignee of the MAO, filed a complaint against the Defendant to recover payments and damages. Along with a private cause of action for double damages under the MSP, Plaintiff also alleged four other counts seeking recovery directly from the primary payer. Defendant filed a motion to dismiss the complaint arguing that (1) the Plaintiff failed to establish the Defendant's primary payer responsibility, (2) MAOs do not have a private cause of action under the MSP, (3) MAOs do not have a right of subrogation under CMS regulations, and (4) the Plaintiff cannot allege a third-party beneficiary breach of contract claim because the Plaintiff is not an intended third party beneficiary to the contract between the Defendant and the insured. Importantly, Plaintiff's suit was brought as a putative class action.

In examining the first three issues, the court once again relied on two recent Eleventh Circuit decisions. In MSP Recovery, LLC v. Allstate Ins. Co., 2016 WL 4525222 (11th Cir. August 30, 2016), the Eleventh circuit held that "a contractual obligation may serve as sufficient demonstration of responsibility for payment to satisfy the condition precedent to suit under the MSP." As such, to satisfy the condition precedent to suit under the MSP, the plaintiff must merely allege that the Defendant's valid insurance contract renders the defendant primarily responsible for payment of the enrollee's medical expenses. In addition, in Humana Med. Plan, Inc. v. W. Heritage Ins. Co., No. 15-11436, 2016 WL 4169120 (11th Cir. August 8, 2016), the Eleventh circuit held that an MAO may pursue a private cause of action against a primary payer when the primary plan fails to pay for an enrollee's medical expenses or reimburse the MAO for payments rendered.

Consequently, the court denied Defendant's motion to dismiss as to these first three issues. In its discussion, the court noted that the Plaintiff pled facts sufficient to establish that the Defendant maintained a valid, current insurance contract with a Med-Pay benefits provision, that the Med-Pay provision covered the medical benefits provided to the enrollee, and the policy was the primary insurance coverage for the enrollee. The court also reiterated that, under the decision of the Humana court, MAOs do have a private cause of action under the MSP and, therefore, also maintain subrogation rights.

In examining the fourth issue, the court found that Plaintiff failed to allege that it is an intended thirty party beneficiary of the allegedly breached contract between Defendant and its insured. As a result, Defendant's motion to dismiss the third party beneficiary claim was granted with leave to amend.
Regarding the possible class action status, Defendant's motion to dismiss argued that Plaintiff's claims were not appropriate for class action treatment. Although the court noted that Defendant's motion raised several potentially problematic areas for Plaintiff in establishing class certification, the court ultimately decided that it did not have enough information to determine whether or not the prerequisites for a class action had been satisfied. As a result, Defendant's motion to dismiss the class allegations was denied.

U.S. District Court Again Follows Eleventh Circuit Decision Finding that the Existence of a Contractual Obligation is Sufficient for a Private Cause of Action Under the MSP Act

MSP Recovery, LLC v. Allstate Ins. Co., No. 15-21532, 2017 U.S. Dist. LEXIS 41424 (U.S. Dist. S.D. Fla., March 21, 2017) was recently back before the United States District Court for the Southern District of Florida, again on a motion to dismiss. As you may recall, this case was one of the seven consolidated cases included in the Eleventh Circuit decision finding that a contractual obligation alone could satisfy the "demonstrated responsibility" requirement of the private cause of action provision of the Medicare Secondary Payer Act (MSPA). MSP Recovery, LLC v. Allstate Ins. Co., 853 F.3d 1351 (11th Cir. 2016) [hereinafter Allstate].

Here, Defendant Allstate moved to dismiss the action on the basis that Plaintiff MSP Recovery lacked standing under the MSPA because the assignment agreement between MSP Recovery and assignee Florida Healthcare Plus (FHCP), a Medicare Advantage Organization, was void. The court noted, however, that this is the same argument Defendant presented to the Eleventh Circuit in Allstate, which failed. The Allstate court concluded that assignment of claims from a Medicare Advantage Organization to MSP Recovery were valid and gave MSP Recovery standing under the MSPA. Accordingly, the present court found that MSP Recovery had standing to sue.

The Defendant also argued that Plaintiff's complaint should be dismissed because it did not specifically plead that Defendant was responsible for paying enrollee's medical bills. Again relying on Allstate, the Court held that Plaintiff's allegation of Defendant's contractual obligation to pay was adequate to proceed with a private cause of action under the MSPA. The court refused to require Plaintiff to allege additional information at the pleading stage and held that the complaint was sufficient to survive the motion to dismiss.

As always, we will continue to monitor these decisions and update you on any new developments.

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